CANCELLED

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

~~ARREKKANT~~ CR. APPEAL NO. 245 /95

CF0000058257

Appellant :- Goverdhan son of Shobhnath Bind aged 23 yrs; resident of village Nirtu police station Sipat Tahsil and District Bilaspur M.P.

v/s

Respondents : State of M.P.

Single Bench (Cr.)

Conviction	Sentence
u/s 498 A IPC	R.I. for three yrs

CRIMINAL APPEAL UNDER SECTION 374 (2) CR. P.C.

2507

14/12/95

Arrival ... by Shri Lee Meena Advocate

(16) AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.245 of 1995

Goverdhan

Vs.

State of Chhattisgarh

JUDGMENT

Noted.
C.A. 30/4/07

Post for 30.4.2007

Sd/-
Sunil Kumar Sinha
Judge

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.245 of 1995

Appellant: Goverdhan, s/o of Shobnath Bind, aged 23 years, resident of Village Nirtu Police station Sipat, Tahsil and Distt. Bilspur, M.P. (now C.G)

Vs.

Respondent: State of Madhya Pradesh (now Chhattisgarh)

Appearance:

Shri Dharmesh Shrivastava, counsel for the appellant.

Shri U.K.S. Chandel, Panel Lawyer, for the State.

JUDGMENT
(30.4.2007)

Sunil Kumar Sinha, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 30.1.1995 passed by the V Addl. Sessions Judge, Bilaspur, in Sessions Trial No.437/ 1992 whereby the said Court convicted the appellant u/s 498-A IPC and sentenced him to undergo R.I. for 3 years.

(2) The brief facts are that the accused persons (4 in number) were charged under sections 304-B, 306 and 498-A I.P.C. The appellant is the husband of the deceased namely Gajra Bai. The other co-accused persons were brother-in-law *(Jeth*, who died during the pendency of the trial), sister-in-law *(Jethani)* and niece of the husband of the deceased. The case of the prosecution was that deceased Gajra Bai, who was resident of village Budi, was married to the appellant 3-4 years prior to the date of incident, which took place on 20.5.1992. On the said date, while residing in her in-laws place in village Nirtu, the

deceased consumed poison resulting into her death. Initially, the accused persons had not reported the matter to the Police but when the intervention was made by villagers, a *merg* intimation was lodged by Parasram (accused no.2) in police station on 26.9.1992 which was reduced into writing as Ex.P.3. The inquest on the dead body was prepared on the same day under Ex.P.8 and the body was sent for postmortem. Certain clothes etc., of the deceased were also seized under Ex.P.9. The postmortem report, Ex.P.2, was received and ultimately after completion of the investigation, a charge sheet u/s 306 and 304-B IPC was filed against the above 4 persons. The Sessions Judge framed charges u/ss 498-A, 306, in alternative 304-B IPC, to which the accused persons denied. After conclusion of the trial, all other accused persons were acquitted. However the appellant was convicted u/s 498-A only and sentenced to undergo R.I. for 3 years, as aforementioned. It is against this judgment of conviction and order of sentence, this appellant has filed this appeal.

(3) The conviction of the appellant is based upon testimony of P.W.5 Laxmin Bai, mother of the deceased and P.W.8 Birspati Bai, aunt of the deceased. The Sessions Court has recorded a finding that when the deceased had visited to her parents place on the occasion of *Teeja* festival, she had stated to her parents that once she was beaten by the appellant, due to which, she was unable to move for 7 days. The mother asked her as to why she was beaten, on which, she told that her husband was having illicit relations with her sister-in-law *(Jethani)* namely Dwarika Bai (accused no.3), therefore, she was beaten by him.

Almost similar evidence was given by Birspati (P.W.8), therefore the appellant was guilty of an offence u/s 498-A IPC.

(4) Learned counsel for the appellant argued that there is no cogent and reliable evidence on record to hold the appellant guilty of an offence punishable u/s 498-A. His submission was that when the Sessions Court has acquitted the appellant u/ss 304-B and 306 IPC, consequently he would have been acquitted of this section also. He also argued that in fact, such statements, allegedly given by the deceased to these two witnesses, were not admissible in evidence u/s 32 of the Evidence Act and they would be classified as Hearsay evidence, barring which, nothing is there on record, therefore, the conviction of the appellant be set aside.

(5) On the other hand, learned State Counsel argued that the statement made by the deceased to her mother and aunt were admissible in evidence and the conviction based upon such evidence cannot be assailed.

(6) I have heard learned counsel for the parties at length and have also perused the records of the Sessions Case.

(7) P.W.5 Laxmin Bai (mother) has stated that when her daughter came to visit her house on the occasion of *Teeja* festival, she had stated her that she was beaten by the appellant due to which, she was unable to move for 7 days. On this, when she was asked as to why she was beaten, she stated that her husband had illicit relations with her *Jethani* namely Dwariki Bai (accused no.3), due to which, she was beaten by him. This witness has further deposed vide Para 3 that for about a year or two, the girl stayed in her house and thereafter, as deposed vide

Paras 5 & 6, when the mother-in-law came to her house and again took the girl with her, then, after living for about two years in the in-laws place, the deceased had died. P.W.8, who is the aunt of the deceased, has also deposed almost similarly saying that the deceased was treated with cruelty by the husband on account of his illicit relations with the sister-in-law Dwariki Bai. It is on these two sets of evidence, the appellant has been convicted.

(8) As regards the first argument that when the appellant and other co-accused persons were acquitted u/ss 306 & 304-B IPC, then they all should have been acquitted u/s 498-A IPC also, has no force. The law is well settled that section 306, 304-B & 498-A IPC are independent of each other and acquittal of one does not lead to acquittal on the other, but in order to justify a conviction u/s 498-A, there must be available on record some material and cogent evidence. Please see ***2002 (2) A N J (S.C) 622 – Girdhar Shankar Tawade –Vs- State of Maharashtra***. Therefore, the first argument raised by learned counsel for the appellant cannot be sustained.

(9) So far as the second argument is concerned, admittedly the appellant and other accused persons were tried for the offence punishable u/ss 304-B, 306 & 498-A of I.P.C. and the evidence of mother (P.W.5) and aunt (P.W.8) were recorded during the course of trial, on such offence. Their such evidence were taken on record with the aid of section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence u/s 304-B & 306 IPC and such statements were admissible under Clause I of the said section as it related to the

cause of death of the deceased and the circumstance of the transaction which resulted in her death. Such statements were not admissible in evidence for the offence punishable u/s 498-A IPC and has to be termed as being only a Hearsay evidence. Section 32 is an exception to the Hearsay Rule and it deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement, which otherwise is covered by the Hearsay Rule, does not fall within the explanations of section 32 of the Evidence Act then the same cannot be relied upon for finding the guilt of accused u/s 498-A. I am fortified in my views by the judgment of the Apex Court in the matter of ***Gananath Pattnaik –vs- State of Orissa 2002 Cr.L.R (SC) 175***.

(10) In the present case, except the aforesaid evidence of mother and aunt of the deceased, regarding treating the deceased with cruelty by husband and also regarding his illicit relations with accused no.3, there is no other legal evidence on record to connect the appellant with commission of offence punishable u/s 498-A. When the appellant and other accused persons were acquitted of the charges framed u/s 304-B and 306 IPC, on the principles referred to above, this evidence of mother (P.W.5) and aunt (P.W.8) would be categorized as Hearsay evidence, for the purpose of section 498-A and the conviction of the appellant based upon such evidence being not legal evidence cannot be sustained in the eye of law. More over, after telling like this, the deceased resided for two years in her parents place and thereafter when she went to her in-laws place

in the second round then after residing there for about two years more, she committed suicide. There appears to be absolutely no legal evidence against the appellant in this matter and the conviction based upon only such evidence of mother and aunt has to be set aside.

(11) The appeal is accordingly allowed. The conviction and sentence awarded u/s 498-A are set aside. The appellant is acquitted of the charges u/s 498-A also. His bail bonds be discharged.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/